

Oetker, J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORKCATHERINE RUBERY, Derivatively on
Behalf of E*TRADE FINANCIAL
CORPORATION,

Plaintiff,

-against-

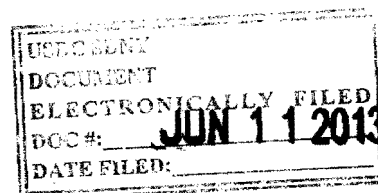
MITCHELL H. CAPLAN, ROBERT J.
SIMMONS, R. JARRETT LILIEN, DENNIS
E. WEBB, MICHAEL K. PARKS, LEWIS E.
RANDALL, DONNA L. WEAVER,
STEPHEN H. WILLARD, RONALD D.
FISHER, C. CATHLEEN RAFFAELI,
GEORGE A. HAYTER, and DARYL G.
BREWSTER,

Defendants,

-and-

E*TRADE FINANCIAL CORPORATION, a
Delaware corporation,

Nominal Defendant.



Civil Action No.

07 Civ. 8612 (JPO)

STIPULATION AND ~~PROPOSED~~ ORDER REGARDING DISCOVERY SCHEDULING

WHEREAS this action comprises two related shareholder derivative actions brought in this Court against certain officers and directors of Nominal Defendant E*TRADE Financial Corporation on October 4, 2007, subsequently consolidated under the caption *Rubery v. Caplan, et al.*, Case No. 07-cv-8612 (the "Action");

WHEREAS the Court granted preliminary approval of a settlement in the Action in an order entered on April 2, 2013, and set the hearing on final settlement approval for 10:00 a.m. on September 13, 2013;

WHEREAS plaintiffs' counsel filed their application for an award of fees and reimbursement of expenses (the "Fee and Expense Application") on May 17, 2013, defendants are to file their

opposition to the Fee and Expense Application not later than July 16, 2013, and plaintiffs' counsel are to file their reply in support of the Fee and Expense Application not later than August 15, 2013;

WHEREAS, on April 30, 2013, the Court ordered the parties to meet and confer and agree upon a schedule for discovery relating to the Fee and Expense Application;

WHEREAS the parties have met and conferred and reached the agreement set forth below;

IT IS HEREBY STIPULATED AND AGREED by and among the undersigned counsel for the parties to the Action as follows:

1. Defendants shall serve plaintiffs' counsel with requests for the production of documents, if any, on or before May 28, 2013.

2. Plaintiffs' counsel shall serve responses and objections to defendants' requests for the production of documents, and shall make good faith efforts to produce non-objectionable responsive documents, on or before June 17, 2013. If plaintiffs' counsel are unable to produce all non-objectionable responsive documents on or before June 17, 2013, they shall provide defendants with a good faith estimate of when they will complete that production.

3. Defendants' interrogatories, if any, must be served on plaintiffs' counsel on or before June 20, 2013.

4. Plaintiffs' counsel shall serve responses and objections to defendants' interrogatories, if any, on or before July 12, 2013. In the event defendants wish to serve supplemental interrogatories based on any documents produced after June 17, 2013, the parties shall meet and confer to address scheduling issues and plaintiffs' objections, if any.

5. In the event defendants decide to seek depositions of the experts who have submitted declarations in support of the Fee and Expense Application, defendants shall serve such deposition notices no later than June 7, 2013. Plaintiffs shall make good faith efforts to consult with the experts as to their availability and, if possible, to produce the experts for deposition not later than July 12,

2013. In the event Defendants decide to seek to depose additional witnesses, the parties shall meet and confer to address scheduling issues and Plaintiffs' objections, if any.


6. By July 22, 2013, the parties shall meet and confer and attempt to reach agreement on (i) the production of such documents or other information plaintiffs' counsel may seek without engaging in formal discovery, and, if they are unable to reach agreement, (ii) a schedule for plaintiffs' counsel's discovery.

7. Nothing in this stipulation shall be construed as a waiver of any objection to the discovery proposed herein or prejudice the right of any party to file any motion or seek any other relief such party believes is appropriate, or to seek further extensions of time on the consent of the other parties or from the Court.

8. This stipulation may be executed in counterparts and with facsimile signatures.

DATED: May ~~28~~ 2013

LAW OFFICES OF THOMAS G. AMON



Thomas G. Amon (TGA 1515)

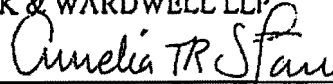
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Co-Lead Counsel for Plaintiffs

DATED: May 28, 2013

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*Counsel for Nominal Defendant E*TRADE and
the Individual Defendants*

SO ORDERED this 10 day of June, 2013



HONORABLE J. PAUL OETKEN
UNITED STATES DISTRICT JUDGE

